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No. 77-673

In the Supreme Court of the United States

OCTOBER TERM, 1977

WARREN QUADE and LYLE QUADE D/B/A "NORTHWEST TRUCK RENTALS" and "AMBER TRANSFER," PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioners contend that although they were convicted of criminal contempt for disobeying a lawful court order, for which "[a] court * * * shall have power to punish by fine or imprisonment, at its discretion" (18 U.S.C. 401), they may not be sentenced to a term of imprisonment because the court order that they disobeyed enjoined activity that itself was otherwise punishable only by the imposition of fines.

On December 8, 1970, as a result of a civil action brought under 49 U.S.C. 322(b)(1) by the Interstate Commerce Commission, the United States District Court for the District of Minnesota granted an order for a consent judgment enjoining petitioners from engaging in

any for-hire transportation of property by motor vehicle in interstate commerce without authorization by the Interstate Commerce Commission, in violation of 49 U.S.C. 303(c). Upon their willful disobedience of this order, petitioners were convicted after a jury trial of criminal contempt, in violation of 18 U.S.C. 401.[1] Petitioners were sentenced to two years' imprisonment, all but four months of which was suspended. The court of appeals affirmed (Pet. App. A).

In contending that the district court had no power to impose prison terms under these circumstances, petitioners do not deny that their conduct violated a lawful court order and therefore constituted criminal contempt, which under 18 U.S.C. 401 is punishable "by fine or imprisonment, at [the court's] discretion." Nor do they claim that 18 U.S.C. 401 is invalid or that prosecution under that statute was improper. Petitioners' claim instead is that the court's authority to punish their contempt is limited to imposing fines because the activity enjoined by the court was punishable only by fine under 49 U.S.C. 322(a).

But it is well settled that "[p]unishment * * * through contempt proceedings, legislative or judicial, is not precluded because punishment may also be inflicted for the same act as a statutory offense." *Jurney* v. *MacCracken*, 294 U.S. 125, 151. Moreover, the existence of the statutory offense does not expressly or impliedly limit the type of punshiment the court may impose for the contempt. As the court of appeals properly noted (Pet.

[1]The undisputed evidence showed that petitioners, on a number of occasions from 1971 to 1974, hauled nonexempt commodities interstate without the required authorization, in violation of the district court's order of consent judgment.

App. A-7 to A-9), petitioners were not sentenced to prison because they violated a statute, but because they acted in contempt of a court order specifically enjoining precise and well defined conduct. "There is no question that [petitioners'] conduct amounted to knowing disobedience of the court's order, and it is this affront to the integrity of the court, not the substantive criminal violation, that is being punished." *United States* v. *Fidanian*, 465 F. 2d 755, 758 (C.A. 5), certiorari denied, 409 U.S. 1044; see *Mitchell* v. *Fiore*, 470 F. 2d 1149 (C.A. 3), certiorari denied, 411 U.S. 938.

The existence of a court order leaves no doubt that petitioners knew that their conduct was unlawful: "When the order [was] entered [petitioners were] fully advised of what must be done to avoid punishment" (*United States* v. *Fidanian*, *supra*, 465 F. 2d at 758). Indeed, petitioners were given a second opportunity to comply with the law, "even though the facts and circumstances giving rise to the order might also have supported criminal liability" (*ibid.*). Under these circumstances, petitioners' insistence on engaging in the unlawful conduct demonstrates a flagrant disregard for the law that warranted the imposition of a term of imprisonment.[2]

[2]In providing that the government could seek either the imposition of fines (49 U.S.C. 322(a)) or the entry of a court order (49 U.S.C. 322(b)) when an individual violated the law here involved (49 U.S.C. 303), Congress must have understood and intended, when the latter course was chosen but the unlawful conduct did not cease, that a court would be able to punish "by fine or imprisonment, at its discretion" (18 U.S.C. 401). Of course, the punishment imposed by the district court would be subject to review by the court of appeals. Here the partially suspended two-year sentence was amply justified by the evidence (see note 1, *supra*).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

FEBRUARY 1978.

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